



General Assembly

January Session, 2005

Raised Bill No. 6488

LCO No. 2879

02879_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE DEATH PENALTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-46a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) A person shall be subjected to the penalty of death for a capital
4 felony only if a hearing is held in accordance with the provisions of
5 this section.

6 (b) For the purpose of determining the sentence to be imposed when
7 a defendant is convicted of or pleads guilty to a capital felony, the
8 judge or judges who presided at the trial or before whom the guilty
9 plea was entered shall conduct a separate hearing to determine the
10 existence of any mitigating factor concerning the defendant's character,
11 background and history, or the nature and circumstances of the crime,
12 and any aggravating factor set forth in subsection (i). Such hearing
13 shall not be held if the state stipulates that none of the aggravating
14 factors set forth in subsection (i) of this section exists or that any factor
15 set forth in subsection (h) of this section exists. Such hearing shall be
16 conducted (1) before the jury which determined the defendant's guilt,

17 or (2) before a jury impaneled for the purpose of such hearing if (A) the
18 defendant was convicted upon a plea of guilty; (B) the defendant was
19 convicted after a trial before three judges as provided in subsection (b)
20 of section 53a-45; or (C) if the jury which determined the defendant's
21 guilt has been discharged by the court for good cause, or (3) before the
22 court, on motion of the defendant and with the approval of the court
23 and the consent of the state.

24 (c) In such hearing the court shall disclose to the defendant or [his]
25 the defendant's counsel all material contained in any presentence
26 report which may have been prepared. No presentence information
27 withheld from the defendant shall be considered in determining the
28 existence of any mitigating or aggravating factor. Any information
29 relevant to any mitigating factor may be presented by either the state
30 or the defendant, regardless of its admissibility under the rules
31 governing admission of evidence in trials of criminal matters, but the
32 admissibility of information relevant to any of the aggravating factors
33 set forth in subsection (i) shall be governed by the rules governing the
34 admission of evidence in such trials. The state and the defendant shall
35 be permitted to rebut any information received at the hearing and shall
36 be given fair opportunity to present argument as to the adequacy of
37 the information to establish the existence of any mitigating or
38 aggravating factor. [The burden of establishing any of the aggravating
39 factors set forth in subsection (i) shall be on the state. The burden of
40 establishing any mitigating factor shall be on the defendant.] The state
41 shall have the burden of establishing the existence of any of the
42 aggravating factors set forth in subsection (i) of this section beyond a
43 reasonable doubt. The defendant shall have the burden of establishing
44 the existence of any mitigating factor by a preponderance of the
45 evidence.

46 (d) In determining whether a mitigating factor exists concerning the
47 defendant's character, background or history, or the nature and
48 circumstances of the crime, pursuant to subsection (b) of this section,
49 the jury or, if there is no jury, the court shall [first] determine whether

50 a particular mitigating factor concerning the defendant's character,
 51 background or history, or the nature and circumstances of the crime,
 52 has been established by the evidence. [, and shall determine further
 53 whether that factor is mitigating in nature, considering all the facts and
 54 circumstances of the case.] Mitigating factors are such as do not
 55 constitute a defense or excuse for the capital felony of which the
 56 defendant has been convicted, but which, in fairness and mercy, may
 57 be considered as tending either to extenuate or reduce the degree of
 58 [his] the defendant's culpability or blame for the offense or to
 59 otherwise constitute a basis for a sentence less than death.

60 (e) The jury or, if there is no jury, the court shall return a special
 61 verdict setting forth its findings as to the existence of any factor set
 62 forth in subsection (h) of this section, the existence of any aggravating
 63 factor or factors set forth in subsection (i) of this section and whether
 64 any aggravating factor or factors outweigh any mitigating factor or
 65 factors found to exist pursuant to subsection (d) of this section.

66 (f) If the jury or, if there is no jury, the court finds that (1) none of
 67 the factors set forth in subsection (h) of this section exist, (2) one or
 68 more of the aggravating factors set forth in subsection (i) of this section
 69 exist, and (3) (A) no mitigating factor exists, or (B) one or more
 70 mitigating factors exist but are outweighed by one or more
 71 aggravating factors set forth in subsection (i) of this section, the court
 72 shall sentence the defendant to death. If the jury or, if there is no jury,
 73 the court makes the finding set forth in subparagraph (B) of
 74 subdivision (3) of this subsection, it must be persuaded beyond a
 75 reasonable doubt that such one or more aggravating factors outweigh
 76 such one or more mitigating factors and that death is the appropriate
 77 punishment in the case.

78 (g) If the jury or, if there is no jury, the court finds that (1) any of the
 79 factors set forth in subsection (h) of this section exist, or (2) none of the
 80 aggravating factors set forth in subsection (i) of this section exists, or
 81 (3) one or more of the aggravating factors set forth in subsection (i) of

82 this section exist and one or more mitigating factors exist, but the one
83 or more aggravating factors set forth in subsection (i) of this section do
84 not outweigh the one or more mitigating factors, the court shall impose
85 a sentence of life imprisonment without the possibility of release.

86 (h) The court shall not impose the sentence of death on the
87 defendant if the jury or, if there is no jury, the court finds by a special
88 verdict, as provided in subsection (e) of this section, that at the time of
89 the offense (1) the defendant was under the age of eighteen years, or
90 (2) the defendant was a person with mental retardation, as defined in
91 section 1-1g, or (3) the defendant's mental capacity was significantly
92 impaired or the defendant's ability to conform the defendant's conduct
93 to the requirements of law was significantly impaired but not so
94 impaired in either case as to constitute a defense to prosecution, or (4)
95 the defendant was criminally liable under sections 53a-8, 53a-9 and
96 53a-10 for the offense, which was committed by another, but the
97 defendant's participation in such offense was relatively minor,
98 although not so minor as to constitute a defense to prosecution, or (5)
99 the defendant could not reasonably have foreseen that the defendant's
100 conduct in the course of commission of the offense of which the
101 defendant was convicted would cause, or would create a grave risk of
102 causing, death to another person.

103 (i) The aggravating factors to be considered shall be limited to the
104 following: (1) The defendant committed the offense during the
105 commission or attempted commission of, or during the immediate
106 flight from the commission or attempted commission of, a felony and
107 the defendant had previously been convicted of the same felony; or (2)
108 the defendant committed the offense after having been convicted of
109 two or more state offenses or two or more federal offenses or of one or
110 more state offenses and one or more federal offenses for each of which
111 a penalty of more than one year imprisonment may be imposed, which
112 offenses were committed on different occasions and which involved
113 the infliction of serious bodily injury upon another person; or (3) the
114 defendant committed the offense and in such commission knowingly

115 created a grave risk of death to another person in addition to the
116 victim of the offense; or (4) the defendant committed the offense in an
117 especially heinous, cruel or depraved manner; or (5) the defendant
118 procured the commission of the offense by payment, or promise of
119 payment, of anything of pecuniary value; or (6) the defendant
120 committed the offense as consideration for the receipt, or in
121 expectation of the receipt, of anything of pecuniary value; or (7) the
122 defendant committed the offense with an assault weapon, as defined
123 in section 53-202a; or (8) the defendant committed the offense set forth
124 in subdivision (1) of section 53a-54b to avoid arrest for a criminal act or
125 prevent detection of a criminal act or to hamper or prevent the victim
126 from carrying out any act within the scope of the victim's official
127 duties or to retaliate against the victim for the performance of the
128 victim's official duties.

129 (j) If the hearing is conducted before a jury and the jury is unable to
130 unanimously return a special verdict as provided in subsection (e) of
131 this section within a reasonable period of time, the court shall
132 discharge the jury and impose a sentence of life imprisonment without
133 the possibility of release.

134 (k) If the hearing is conducted before a jury, the court shall instruct
135 the jury of the sentence that the court will impose pursuant to
136 subsection (f), (g) or (j) of this section.

137 (l) At the conclusion of the presentation of evidence and prior to
138 closing arguments, the court shall allow the defendant a reasonable
139 opportunity to make a personal statement in his or her behalf to the
140 jury or, if there is no jury, to the court without being sworn or subject
141 to cross-examination.

142 Sec. 2. Section 53a-46d of the general statutes is repealed and the
143 following is substituted in lieu thereof (*Effective from passage*):

144 [A] If a defendant is convicted of or pleads guilty to a capital felony,
145 a victim impact statement prepared with the assistance of a victim

146 advocate [to] shall be placed in the court files. [in accordance with
147 subdivision (2) of subsection (a) of section 54-220 may be read in court
148 prior to imposition of sentence upon a defendant found guilty of a
149 crime punishable by death] At the conclusion of the presentation of
150 evidence and prior to closing arguments at a hearing conducted
151 pursuant to section 53a-46a, as amended by this act, the court shall
152 allow a representative of each deceased victim a reasonable
153 opportunity to make a victim impact statement to the jury or, if there is
154 no jury, to the court. Such representative shall be an individual who is
155 a "crime victim", as defined in section 1-1k.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	53a-46a
Sec. 2	<i>from passage</i>	53a-46d

Statement of Purpose:

To make certain revisions to the penalty phase procedure in capital felony trials including specifying the burden of persuasion to establish aggravating and mitigating factors, specifying the process for determining the existence of mitigating factors, specifying the level of certitude necessary for a finding that aggravating factors outweigh mitigating factors, specifying the sentence imposed when a jury deadlocks, requiring the court to instruct the jury as to the consequences of their verdict or failure to reach a verdict, granting the defendant a right of allocution and authorizing a victim impact statement to be made prior to the return of a verdict.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]